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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Plaintiff,

9 -vs-

10 THOMAS HAROLD NAASZ,
11 Defendant.

NO. CR-05-02126-WFN-1

ORDER AND REFERRAL TO
MAGISTRATE JUDGE LEAVITT

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13 A pretrial conference and motion hearing was held September 28, 2006. The
14 Defendant, who is in custody, was present and represented by Rebecca Pennell; Assistant
15 United States Attorney James Hagarty represented the Government.

16 The Court addressed the pending defense Motion to Withdraw Guilty Plea and to
17 Dismiss. Defendant also raised the issue regarding his custody status.

18 The Court has reviewed the file and Defendant's Motion and is fully informed. This
19 Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

20 **IT IS ORDERED** that:

21 1. Defendant's Motion to Withdraw Guilty Plea, filed August 2, 2006, **Ct. Rec. 58-1**,
22 is **GRANTED**. During the plea colloquy the Court neglected to ascertain whether the
23 Defendant knew when he made the statement that it was false which was required to satisfy
24 the third element of the charged offense.

25 2. Defendant's Motion to Dismiss Indictment, filed August 2, 2006, **Ct. Rec. 58-2**, is
26 **DENIED with a right to renew.**

1 3. A new trial date shall be set for **December 4, 2006, at 1:00 p.m., in Yakima,**
2 **Washington.**

3 4. The final pretrial conference shall be set for **December 4, 2006, at 11:00 a.m., in**
4 **Yakima, , Washington.**

5 5. Trial briefs, motions in limine, requested voir dire, witness and exhibit lists, and
6 a set of proposed **JOINT JURY INSTRUCTIONS** shall be filed and served on or before
7 **November 20, 2006.**

8 Jury instructions should only address issues that are unique to this case, and shall
9 include instructions regarding the elements of each claim, any necessary definitions and a
10 proposed verdict form.

11 The Joint Proposed Jury Instructions shall include:

12 (a) The instructions on which the parties agree; and

13 (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed
14 version of an instruction upon which they do not agree). All jury instructions from the most
15 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by
16 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements
17 of LR 51.1(c).

18 Each party shall address any objections they have to instructions proposed by
19 any other party in a memorandum. The parties shall identify the specific portion of
20 any proposed instruction to which they object and shall elaborate the basis for the
21 objection. Objections asserting that an instruction sets forth an incorrect statement of
22 law shall describe the legal authority that supports this objection. Failure to file an objection
23 and supporting argument may be construed as consent to the adoption of an instruction
24 proposed by another party.

25 6. An additional pretrial conference and motion hearing shall be held **November 7,**
26 **2006, at 9:45 a.m., in Yakima, Washington.**

1 (a) All additional motions shall be filed and served no later than **October 20,**
2 **2006.**

3 (b) Responses shall be filed and served no later than **October 27, 2006.**

4 7. The Court will refer the matter regarding custody to Magistrate Judge Leavitt to
5 resolve. Defendant plans to file a motion for hearing before Judge Leavitt.

6 The District Court Executive is directed to file this Order and provide copies to counsel
7 **AND TO** Magistrate Judge Leavitt.

8 **DATED** this 2nd day of October, 2006.

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11 09-2806

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE